

# Board of Adjustment

## Minutes



City Council Chambers, Lower Level  
January 12, 2010

### **Board Members Present:**

Garrett McCray, Chair  
Scott Thomas, Vice Chair  
Nicholas Labadie  
Greg Hitchens  
Judah Nativio  
Diane von Borstel

### **Staff Present:**

Gordon Sheffield  
Angelica Guevara  
Mia Lozano-Helland  
Lesley Davis  
Wahid Alam  
Tom Ellsworth  
Tim Lillo

### **Board Members Absent:**

Tyler Stradling - excused

### **Others Present:**

Gerarado Juarez  
Phil Smithers  
Margaret Connett  
Tom Anderson  
Denny Ebel  
Susan Hatch  
Cathy & Ed Shepherd  
Marcella Cronenberg  
Debbie & Steve Wylie  
Robert Femmelkamp  
Rulon Anderson

The study session began at 4:40 p.m. The Public Hearing meeting began at 5:43 p.m. Before adjournment at 8:10 p.m., the following items were considered and recorded.

### **Study Session 4:40 p.m.**

The study session began at 4:40 p.m. The items scheduled for the Board's Public Hearing were discussed.

#### **A. Zoning Administrator Update:**

1. Mr. Sheffield provided an explanation and discussion of two documents that were handed out to the Board members. The items were: The City of Mesa Commercial Communication Tower Guidelines and The Wireless Communications Design and Placement Guidelines for Parks and Recreational Facilities. He noted that these two items had been adopted by resolution by the City Council as the official wireless communications facility placement policies for the City of Mesa.
2. Mr. Sheffield spoke briefly about board members and conflict of interest issues.
3. Mr. Sheffield provided an update on the status of the draft update to the Zoning Ordinance.

### **Public Hearing 5:43 p.m.**

- A. Consider Minutes from the December 8, 2009 Meeting. A motion was made to approve the minutes by Boardmember von Borstel and seconded by Boardmember Thomas. Vote: Passed 6-0 (Stradling absent)
- B. Consent Agenda. A motion to approve the consent agenda as read was made by Boardmember Labadie and seconded by Boardmember von Borstel. Vote: Passed 6-0 (Stradling absent)

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**Case No.:** BA09-038 (PLN2009-406)

**Location:** 1550 West 1<sup>st</sup> Street

**Subject:** Requesting: 1) a Special Use Permit for Accessory Living Quarters; and 2) a Variance to allow Accessory Living Quarters to encroach into a required yard in the R1-6 zoning district. (PLN2009-00406)

*This case was continued from the December 8, 2009 meeting.*

**Decision:** Denied

### **Summary:**

Mr. Juarez, the property owner, explained that he is unable to make the modifications due to the possibility of compromising the structural integrity of the building and his lack of funds to accomplish the remodel. He stated that the structure existed in its present condition as an accessory living unit when he purchased the property over ten years ago. He further stated that contrary to what the neighbors have said, there have never been ten persons living in the unit. He explained that he has a large extended family and there are often large groups of family members visiting him, but not living in the unit, thus explaining the cars parked on the street that his neighbors have complained about. He stated that there are other properties in the neighborhood that have detached accessory living quarters and residents who have cars parked on the street as well. He does not understand why, after ten years, his neighbors have now decided to complain.

Neighborhood comments were as follows:

Margaret Connett, voiced her opposition to the request claiming it would set a precedent in the neighborhood and create a multifamily district with no oversight.

Kathy Shepherd, stated her opposition and said that the structure is always occupied and creates numerous extra vehicles on the street.

Ed Shepherd, stated that the structure was originally constructed as a garage/shop with the understanding that it would never be used as an accessory living quarter. He further said that soon after construction the unit was being occupied by a friend of the owner. Board member Nativio asked Mr. Shepherd why, if he knew that it was being occupied as a dwelling unit all those years, did he wait until now to voice opposition? Board member Nativio explained that Mr. Juarez is attempting to legalize the use and structure through this request. Mr. Shepherd replied that the unit was not approved to be used as a dwelling unit and had no response to why there had not been a complaint filed sooner. Kathy Shepherd stated that at one point there were ten people living in the unit and that was when she and her husband complained.

Ms. Guevara provided the staff report and recommendation of denial due to a lack of evidence to show compliance with the criteria needed to justify a variance. She further clarified the request and pointed out that the setbacks for the subject structure and the primary residence do not meet today's codes; however, they both met the code at the time of construction. Board member Hitchens stated that the applicant is unable to provide special circumstances that would grant an approval. Board member Labadie said that the request does not meet the test for approval of a variance. Board member Nativio said that the

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opposition has not been about the setbacks variance, but has been about the use; i.e., the number of people and cars. Chair McCray stated that this is a difficult case and finds it hard to support approval. A brief discussion ensued regarding the support of the variance vs. non-support of the use permit.

**Motion:** It was moved by Boardmember Thomas, seconded by Boardmember Hitchens to deny BA09-038.

**Vote:** Passed 4-2 (Labadie, Nativio – voting nay)

### **Findings:**

- 1.1** The applicant proposed to convert an existing detached storage building into accessory living quarters. The existing storage building was constructed in 1995 and allowed in its current location for use a garage/storage. The existing structure is 14 feet in height and located a distance of 26 feet from the home. The subject site is zoned R1-6, is 8,398 sq. ft. in area, and is surrounded by similar size and shape single family residence parcels that are also zoned R1-6.
- 1.2** The requested variance would have allowed the existing accessory building to be used as living quarters. Encroachments into the rear yard setback are permitted only for detached accessory buildings.
- 1.3** The parcels within the R1-6 zoning district require a minimum of a 5 foot side yard on one side, a 10 foot side yard on the other, with both sides totaling 15 feet, and require a minimum of a 20 foot rear yard setback. The R1-6 zoning district also allows a maximum of 40% roof area coverage on the lot. The site plan includes the general location of the existing home and the existing detached garage converted to accessory living quarters. The existing roof area coverage on the lot is approximately 28%.
- 1.4** The accessory living quarters requires the granting of a variance. The Board of Adjustment must find the following items are present to approve a variance:
  - a) There are special conditions that apply to the land or building.
  - b) The special condition was pre-existing and not created by the property owner.
  - c) That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.
  - d) The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.
- 1.5** The applicant's justification notes the following: 1) the size of the accessory living quarters is 704 square feet and located in the back yard; 2) the living quarters has two small rooms, a bathroom, an open floor space for the living room and kitchen; 3) the existing detached accessory living quarters existed when the current property owner purchased the property eleven years ago; 4) many properties within this zoning district have accessory living quarters, if the variance is denied for this property it would be unfair; 4) this request does not grant special privileges or unusual favors because many properties in this zoning district have the same or similar accessory living quarters in their properties.

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- 1.6** The primary justification noted by the applicant relates to using the existing structure, and therefore allowing the existing structure to be used as accessory living quarters despite the fact that the building encroaches into the side and rear yards. An existing structure and a desire for existing amenities to remain in the existing location are not sufficient justification to unique conditions of the land that prevent the accessory living quarters from complying with setback requirements.
- 1.7** The subject parcel is similar in size and shape as the other nearby parcels within the subdivision. It exceeds the minimum required size for lots in the R1-6 zoning district (6,000 s.f.).
- 1.8** The applicant has not provided sufficient justification related to special or unique conditions of the land to support the requested variance.

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**Case No.:** BA10-001 (PLN2009-00391)

**Location:** 1250 South Clearview Avenue

**Subject:** Requesting a Special Use Permit to allow a commercial communication tower to exceed the maximum height permitted in the PEP zoning district.

**Decision:** Approved with the following conditions:

**Summary:** This case was on the consent agenda and not discussed on an individual basis.

**Motion:** It was moved by Boardmember Labadie, seconded by Boardmember von Borstel to approve BA10-001 with staff conditions.

1. *Compliance with the site plan submitted except as modified by the following conditions below.*
2. *The proposed CCT shall be a monopalm.*
3. *The monopalm shall have a maximum height of sixty-five feet (65') at the top of the pole and top of the antennas.*
4. *The antennas shall not exceed 4'4" in length, 1'2" in width, and 4" in depth.*
5. *The microwave dishes shall not exceed 2'-2" in diameter.*
6. *The antennas and microwave dishes will be screened with a minimum of 55 palm fronds.*
7. *The antennas shall be painted to match the color of the faux palm fronds.*
8. *The antenna standoff assembly shall not extend more than 8" from the pole.*
9. *The monopalm tower or "trunk" shall be clad with a material resembling the color and texture of a natural palm tree.*
10. *Relocate three required parking spaces that will be eliminated.*
11. *The operator of the monopalm shall respond and complete all identified maintenance and repair of the facility within 30-days of receiving written notice of the problem.*
12. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

**Vote:** Passed 6-0

**Findings:**

- 1.1 The 65-foot high Commercial Communication Tower will be located in the northwest corner of the parcel towards the retention basin in the parking lot area. The lease area is 20'x30' enclosing three required parking spaces. The lease area will be screened by 8 foot tall CMU wall. The 3 foot tall railing on existing CMU wall along the retention basin will be removed to raise the wall to 8 foot height to match other screen wall for the lease area.
- 1.2 The subject property is zoned PEP, which allows CCTs provided they do not exceed 40' in height. The approval of a Special Use Permit (SUP) is required for CCT's which exceed the maximum permitted height of 40', this request is for a 65' high CCT .

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- 1.3** Approval of a SUP requires finding the CCT is compatible with and not detrimental to surrounding properties and is consistent with the General Plan and other recognized plans and City Council policies, including the Commercial Communication Tower Guidelines, adopted in 1997.
- 1.4** The monopole will be 65-feet high. The array of the monopole will consist of three sectors with three antennas, radio heads and three microwave dishes. The antennas will measure 4'2" L x 1'1" W x 4" D and microwave dishes 2'-2" in diameter.
- 1.5** The applicant noted that this site is necessary to provide coverage to the residents and businesses in the area and the need for future co-location as justification for the request. In addition to the applicant's justification, it is important to note that there are other palm trees on the surrounding properties, and the use of a monopalm will be consistent with the existing landscape.
- 1.6** The location of the monopalm complies with the purpose and intent of the Commercial Communications Towers Guidelines, including the placement criteria of the monopalm at 408-feet from the right-of-way, where only 65-feet would be required; and a minimum of 556-feet from the nearest residences to the north, where only 130-feet would be required.

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**Case No.:** BA10-002 (PLN2009-00413)

**Location:** 3041 East McKellips Road

**Subject:** Requesting Special Use Permit to allow a commercial communication tower to exceed the maximum height permitted in the C-2 zoning district.

**Decision:** Approval with the following conditions:

**Summary:** This case was on the consent agenda and not discussed on an individual basis.

**Motion:** It was moved by Boardmember Labadie, seconded by Boardmember von Borstel to approve BA10-002 with staff conditions.

1. *Compliance with the site plan submitted except as modified by the following conditions below.*
2. *Installation of a monopine stealth facility in place of the proposed monopole.*
3. *The monopine shall have a maximum height of sixty-five (65') feet at the top of the proposed monopine trunk/pole, an additional 7-foot in height is allowed for the pine branches.*
4. *The antennas shall be covered with pine needle socks to match the pine needle density and color of the monopine.*
5. *The antennas will be screened with a minimum of 2.5 branches per foot of height.*
6. *The antennas shall not exceed 4'-2" in length, 1'-1" in width, and 4" in depth.*
7. *The antennas shall not extend beyond the needles and the needles shall taper towards the top to give natural look.*
8. *The antennas shall be painted to match the color of the pine needles.*
9. *The antenna standoff T-arm shall not be more than 8-inches from the pole.*
10. *The 8-foot high CMU screen wall and the steel gate shall match in color.*
11. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*
12. *The operator of the monopine shall respond and complete all identified maintenance and repair of the facility within 30-days of receiving written notice of the problem.*

**Vote:** Passed 6-0

**Findings:**

- 1.1 Based on the staff recommendation, the Board agreed that a "monopine" would be the most appropriate design for this location. The applicant was present and did not ask to remove the item from the consent agenda in order to file an objection. The installation of the monopine will be compatible with surrounding landscape, and it will allow future co-location of other wireless communications antennas.
- 1.2 The 65-foot high Commercial Communications Tower (CCT) will be placed on a vacant area behind two existing restaurants. The subject property is zoned C-2, which permits CCTs subject to the approval of a Special Use Permit (SUP). Approval of a SUP requires finding the CCT is compatible with and not detrimental to surrounding properties and is consistent with the General Plan and

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other recognized plans and City Council policies, including the Commercial Communication Tower Guidelines, adopted in 1997.

- 1.3** The monopole will be 65-feet high. The array of the monopole will consist of three sectors, each with three antennas, for a total of nine antennas. The antennas will measure 4'2" L x 1'1" W x 4"D.
- 1.4** The monopole complies with the purpose and intent of the Commercial Communications Towers Guidelines, including the placement criteria: it will be 375-feet from the right-of-way, where only 65-feet is required, and 135-feet from the adjacent vacant parcel to the west, zoned R1-43 (a residential district), where only 130-feet is required.
- 1.6** The applicant noted that this site and the requested height of 65-feet are necessary to provide coverage to the residents and businesses in the area and the need for future co-location as justification for the request.

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## Board of Adjustment Meeting January 12, 2010

**Case No.:** BA10-003 (PLN2009-00462)

**Location:** 748 West Guadalupe Road

**Subject:** Requesting a Special Use Permit to allow a commercial communication tower to be placed in the in the R1-6 zoning district.

**Decision:** Denied

**Summary:**

Rulon Anderson represented the case and provided a summary of the request and answered board member questions. Board member Thomas commented on the durability of the monopine materials. He stated that quite often the monopalms have problems with drooping fronds and an unsightly appearance after a few years. He asked if there is a maintenance schedule in place. Mr. Anderson answered yes and that a technician visits the site each month.

Neighborhood comments were as follows:

Dennis Ebel, spoke in opposition and indicated he was representing over 450 homes in the area. He stated that the residents have made improvements to the fencing and signage along the perimeter of the subdivision and feel that the tree is too tall (almost twice the size of mature trees in the park). Because the proposed monopine was not in-scale with existing trees, it would stand out and and not appear realistic. He strongly objects to placing a commercial activity on a park site that is highly used by neighboring residents.

Robert Femmelkamp, spoke in opposition to the tower and stated that the citizen notification was not effective. He said that the tower is not compatible with the neighborhood and it will be placed in a location that is the entry/exit point for most of the residents of the subdivision.

Phil Smithers, who owns a home that borders the park, spoke in opposition stating that the tower will not blend into the neighborhood and will be a detriment to the area. He pointed that there is a discrepancy in the correct height of the tower. He also commented that the equipment cabinet plan indicates a 'future carrier' and questioned just how many towers will eventually be placed at this location.

Debbie Wylie, spoke in opposition to the requested placement of the 'giant pine tree'. She stated that the park is small and is heavily used by the residents of the area.

Chair McCray asked Parks and Recreation staff member, Andrea Moore, to provide information from the Parks and Recreation Board meeting that discussed this request. A discussion ensued regarding attendance at the meeting, revenue from the tower lease and various alternate sites for the tower within the park. Chair McCray stated that he could see both sides of the issue. Ms Moore stated the initial location of the monopine had been further north, away from Guadalupe Road, towards the play equipment and parking lot. However, the Parks Board was concerned about the placement of the facility so close to the play equipment and asked that it be placed further south, towards Guadalupe Road.

Board member Nativio commented that he does not support a commercial use such as this in an area that is zoned for residential use. He also asked about the base of the tower and the appearance of the equipment cabinet since it is in a park surrounded by residences. Board member Thomas voiced support for request. Board member Labadie stated that he was impressed with the actions of the residents and he was concerned with the negative impact the tower will have. He further stated that he would like to see

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negotiations take place between the residents and Clearwire (the company proposing to utilize the facility) to find a solution. Board member Hitchens said he was not in support of the request due to the concerns of the residents. Board member von Borstel stated that she was 'on the fence' and could see both sides.

**Motion:** It was moved by Boardmember Labadie to continue the case 30-days and allow the two parties to work out a solution. The motion failed due to lack of a second.

It was moved by Boardmember Nativio, seconded by Boardmember Hitchens to deny BA10-003. The request was denied due to the failure of the motion to gain the 4 votes required for approval.

**Vote:** Denied 3-3 (Labadie, Hitchens, Nativio supported the motion to deny the case; Thomas, von Borstel and McCray voted to deny this motion)

### **Findings:**

- 1.1** This application proposes the placement of a 72-foot high monopine in Rancho del Mar Park, which is located at 748 W Guadalupe Rd. in the R1-6 zoning district. The applicant proposed to install a monopine rather than the typical monopole.
- 1.2** The proposed monopine would have been 72-feet high to the top of the "trunk" or pole, with an additional 5-foot of height needed to account for the top for the faux branches of the pine needles (77-feet, total height). The array was to consist of three sectors, with three antennas, three radio heads, and three microwave dishes (2'-2" diameter). The antennas would have been 4'-2" in length, 1'-1" in width, and 4" in depth.
- 1.3** There are existing mature trees on this site, including pine trees. Based on photographs shown and testimony from neighboring residents, these existing trees are significantly shorter than the proposed monopine. The applicant stated that the additional height for the monopine is necessary for the communications signal to clear those trees. The monopine would not have been of a similar scale to the existing landscaping in the park.
- 1.4** The monopine location is not consistent with the setbacks requirements listed Mesa's Commercial Communication Tower (CCT) Guidelines. Although the monopine is approximately 180-feet from the nearest residential property, the setback requirement adjacent to a public right of way is not met by this proposal. The proposed monopine location is approximately 47-feet from the beginning of the public right of way. CCT Guidelines call for a 1-foot setback for each foot of proposed CCT height. In this case, a 72-foot setback from the street right-of-way would be required.
- 1.5** Significant opposition to the placement of the tower by the street was voiced by neighboring residents. Placement of the monopine too close to the street would focus attention on the aesthetic differences of the artificial structure relative to a natural pine tree. The extra height of the pole relative to the existing mature trees in the park would make the monopine stand out and be too noticeable, rather than blend into the landscape background. As proposed, the monopine is not in compliance with the Mesa CCT Guidelines and is therefore not compatible with neighboring properties.

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## Board of Adjustment Meeting January 12, 2010

**Case No.:** BA10-004 (PLN2009-00455)

**Location:** 1546 West University Drive

**Subject:** Requesting a Special Use Permit to allow a commercial communication tower to exceed the maximum height permitted in the C-2 zoning district.

**Decision:** Approved with the following conditions:

1. *Compliance with the site plan submitted except as modified by the following conditions below.*
2. *The commercial communication tower shall utilize a Faux Pine design with a minimum of 55 pine branches, bark cladding to resemble the bark of a natural pine tree, and all antennas, radio heads, and microwave dishes shall be painted to match the color of the pine branches.*
3. *The antennas shall be covered with pine needle socks to match the pine needle density and color of the monopine.*
4. *The commercial communication tower shall have a maximum height of sixty-five feet (65') at the top of the pole and top of the antennas.*
5. *The antennas shall not exceed 4'-4" in length, 1'-2" in width, and 4" depth.*
6. *The antenna standoff assembly shall not extend more than 8" from the pole.*
7. *The operator of the monopine shall respond and complete all identified maintenance and repair of the facility within 30-days of receiving written notice of the problem.*
8. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

**Summary:** This case was on the consent agenda and not discussed on an individual basis.

**Motion:** It was moved by Boardmember Labadie, seconded by Boardmember von Borstel to approve BA10-004 with staff conditions.

**Vote:** 6-0

**Findings:**

- 1.1 The Board determined that the immediate parcels on either side of this site are commercial developments and warrant the use of a faux pine tree design with a minimum of 55 pine branches and a bark-clad pole to camouflage the antennas and wiring. The site to the north is a vacant parcel zoned C-1 and is planned and anticipated for commercial development. The nearest residences are 175' to the north and 165' to the east of this site. The applicant was present and did not ask the item to be removed from the Consent Agenda in order to object to the design changes that would result from the conditions of approval proposed by staff. The Board approved the faux pine tree design because there are other pine trees in the vicinity.
- 1.2 The 65-foot high Commercial Communication Tower (CCT) will be located towards the rear of the parcel behind the automotive repair building within a 625 s.f. lease area surrounded by an 8-foot high CMU wall. The subject property is zoned C-2, which requires approval of a Special Use Permit (SUP) for CCT's which exceed the maximum permitted height of 30'.

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- 1.3** The applicant noted this site is necessary to meet the requirements for their system and to accommodate future co-location as justification for the request.
- 1.4** The location of the CCT complies setback criteria listed in the Commercial Communications Towers Guidelines. It will be approximately 125-feet from the right-of-way, where 65-feet is required. In addition, the CCT will be a minimum of 180-feet from the nearest residential parcels, where 130-feet is required.
- 1.5** The Board finds the proposed the CCT is consistent with Commercial Communication Tower Guidelines, and is consistent with the General Plan and other recognized plans and City Council policies. As conditioned, the facility will be compatible with and not detrimental to surrounding properties.

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**A. Other Business:**

None

Respectfully submitted,

Gordon Sheffield, AICP  
Zoning Administrator

Minutes written by Mia Lozano, Planning Assistant

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